

§ 8. Works in Progress

Rule XXI clause 2(a),⁽⁴⁾ in part prohibits, in general appropriation bills, appropriations for expenditures not previously authorized by law, except to continue appropriations for public works and objects which are already in progress. The phrase refers to tangible works and objects like buildings and roads; it does not contemplate continuance of an indefinite or intangible work.⁽⁵⁾ This exception should be compared with the similar exception contained in clause (5) (now 6) Rule XXI discussed in Chapter 25, Sec. 3.16, *supra*, wherein reappropriations of unexpended balances of appropriations have been prohibited on general appropriation bills since 1946 except in connection with public *works* (not objects) on which work has commenced.

Work Already Commenced

§ 8.1 When the construction of a building for a public pur-

4. *House Rules and Manual* §834 (1985). For discussion of the distinction between appropriations allowed without authorization for "works in progress," and those appropriations which are expressly limited to use for such projects as are authorized by law, see the Parliamentarian's Note at §7.10, *supra*, and see, generally, §7.10-7.13, *supra*.
5. See 4 Hinds' Precedents §§3714, 3715.

pose has been commenced and there is no limit of cost, further unauthorized appropriations may be made under the exception for works in progress.

On Apr. 27, 1945,⁽⁶⁾ the Committee of the Whole was considering H.R. 3024, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

GENERAL FUND, CONSTRUCTION

For continuation of construction of the following projects in not to exceed the following amounts to be immediately available, and to be reimbursable under the reclamation law.

MR. [ROBERT F.] JONES [of Ohio]: Mr. Chairman, a point of order. . . . I make a point of order against the entire paragraph because it is in violation of title 33 (sic), section 414, of the code. . . .

I refer to the paragraph beginning on line 9 and concluding with line 13, on page 59.

Mr. Chairman, the language of the statute (43 USC §414) reads as follows:

Expenditures shall not be made for carrying out the purposes of the reclamation law except out of appropriations made annually therefor and there shall annually in the Budget be submitted to Congress estimates of the amount of money necessary to be expended for carrying

6. 91 CONG. REC. 3911, 3912, 79th Cong. 1st Sess.

out any or all the purposes authorized by the reclamation law, including the extension and completion of existing projects and units thereof and the construction of new projects.

The portion (of the law) to which I call particular attention is:

Annual appropriations made hereunder by Congress for such purposes shall be paid out of the reclamation funds provided for by the reclamation law.

This paragraph is legislation because it changes the positive terms of the statute which I have just quoted.

Referring back to the beginning of the bill, it says:

Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1946, and for other purposes

Be it enacted, etc., That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior for the fiscal year ending June 30, 1946, namely.

This paragraph indicates and shows conclusively that the money will come out of the funds of the Treasury as provided under the terms of the bill. It is in violation of the positive terms of the last sentence of section 414 and, therefore, is legislation on an appropriation bill and subject to a point of order. . . .

Mr. Chairman, on page 21 of Cannon's Precedents it is stated:

In testing the applicability of the rule to a provision under consideration it is necessary to determine, first: Is it a general appropriation bill?

That question shall be asked. Then, if so, "Is the expenditure authorized by law?"

In this case there is legal authority for expending funds on projects generally out of the general fund of the Treasury, and therefore if the language objected to goes one iota beyond the positive terms of section 414, it is legislation and should be stricken out as such.

MR. [CARL] HINSHAW [of California]: Mr. Chairman, I desire to be heard on the point of order, if the Chair will permit. . . .

I desire to call attention to the language in lines 12 and 13, page 59, where it says these amounts are to be reimbursable under the reclamation law. I think it clearly set forth that this category of improvement is under the Reclamation Act, and therefore the point of order should not be sustained.

THE CHAIRMAN:⁽⁷⁾ . . . The gentleman from Ohio invited the attention of the Chair to a certain provision of Cannon's Procedure which was cited by him. The Chair would invite the gentleman's attention to the fact that he stopped reading just one line too soon, in that the next line following the citation presented by the gentleman states:

If not authorized by law is it for a continuation of work in progress?

The Chair is assured by the gentleman from Oklahoma, the chairman of the subcommittee in charge of the bill under consideration, that the items sought to be stricken by the point of order constitute work in progress.

The Chair would invite attention to the fact that it just happens that the present occupant of the chair was presiding over the Committee of the

7. Jere Cooper (Tenn.).

Whole House on the state of the Union during the consideration of the Interior Department appropriation bill on May 17, 1937, and was called upon to rule upon a point of order to the same effect as the point of order here presented. The Chair would invite attention to the decision made on that date. It is to be remembered that if construction for public purposes has been commenced, even though original appropriation therefor was made without authorization of law, yet the work being in actual progress, further appropriations may be made under the principle of works in progress. . . .

The Chair is of the opinion that the paragraph to which objection is here made really comes under the theory of works in progress and, therefore, overrules the point of order.

Project Originally Unauthorized by Law

§ 8.2 If the construction of a project for public purposes has been commenced, further appropriations therefor may be made under the exception for works in progress, even though the original appropriation for the project was unauthorized.

On May 17, 1937, an appropriation for the continuance of the construction of the Central Valley project was held to be in order as a "work in progress." The proceedings, which took place during consideration of H.R. 6958, an In-

terior Department appropriation bill, were as follows: ⁽⁸⁾

Amendment offered by Mr. Scrugham: In line 20, page 81, insert a new paragraph as follows:

Central Valley project, California, \$12,500,000, together with the unexpended balance of the appropriation for this project contained in the First Deficiency Act, fiscal year 1936."

MR. [CASSIUS C.] DOWELL [of Iowa]: Mr. Chairman, a point of order. This is legislation on an appropriation bill, and there is no authority for the appropriation.

May I call the attention of the Chair to the fact that there has been no showing by the committee that there is any authority for the appropriation in this paragraph. The conclusive proof of that is that the proviso just stricken out on a point of order was stricken out because it provided that there may be no authority for this appropriation, and I insist that the paragraph that was stricken out leaves the committee without any authority shown to the Chair under the law for this appropriation.

THE CHAIRMAN: ⁽⁹⁾ The Chair would be pleased to hear the gentleman from California on the point of order.

MR. [FRANK H.] BUCK [of California]: Mr. Chairman, we have had considerable discussion of various similar points of order. The Chair has ruled several times on clause 2 of rule XXI of the House rules. I invite the Chair's attention again to the language of the clause:

8. 81 CONG. REC. 4688, 4689, 75th Cong. 1st Sess.

9. Jere Cooper (Tenn.).

No appropriation shall be reported . . . for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress.

I invite the Chair's attention to the fact that Central Valley project was established as a public-works project by the President under authority of the Emergency Relief Appropriation Act of 1935, and I send to the desk for the attention of the Chair the order establishing this as a public-works project. I call the Chair's attention further to the fact that on the 2d day of December 1935 the President of the United States approved the feasibility order which had been prepared and sent to him by the Secretary of the Interior as required by law to establish this as a reclamation project.

I call attention to the further fact that in the first deficiency bill of 1936 there appeared a paragraph, "Central Valley project, California, for continuation, \$6,900,000", and so forth; and this I send to the desk for the attention of the Chair.

In view of the ruling Friday on the Gila project, I also call the Chair's attention to a letter received from Commissioner of Reclamation Page, dated May 17, 1937, addressed to me. . . .

MY DEAR MR. BUCK: In reply to your request regarding the status of work on the Central Valley project, I am providing the following information concerning construction on this project as of May 1, 1937. . . .

Of the \$11,400,000 available for construction on May 1, 1937, a total of \$1,069,069.48 actually had been expended in construction and engineering work, and a total of \$1,179,600 had been obligated or en-

cumbered. Encumbrances placed since May 1, due to award of additional contracts, have increased the total obligated funds by several hundred thousand dollars.

The construction work now is fully under way, with virtually all the preliminary engineering completed. I feel that the construction is being prosecuted vigorously and that good progress has been and is being made.

Very truly yours,

JOHN C. PAGE,
Commissioner.

Mr. Chairman, I submit that under the rulings of the Chair during the consideration of this bill, and those of previous Chairmen, and under the precedents of the House, that this certainly establishes that this is a public work in progress regardless of the previous authorization contained in the deficiency bill of last year or the authorization under the Emergency Relief Act. Therefore this appropriation is in order, and the point of order should be overruled.

THE CHAIRMAN: Does the gentleman from New York desire to be heard on the point of order?

MR. [JOHN] TABER [of New York]: I do.

THE CHAIRMAN: The Chair will be pleased to hear the gentleman.

MR. TABER: Mr. Chairman, on this point I desire to call the attention of the Chair to the hearings which were held on the 30th day of March, pages 281 and 289, the latter reference especially. It appears from page 281 that a large amount of money has been spent upon the preliminary and exploratory work, but when you get down to page 289 you get to the meat of this question. Down toward the bottom of the page appears the following colloquy:

MR. RICH. What has the money been spent for?

MR. PAGE. The money has been spent for investigation and preliminary work.

That is as of the 30th day of March. There cannot be any question but that is the situation, for that is the evidence before us. This, of course, is not under the reclamation law. This is a proposition where funds were appropriated directly out of the Federal Treasury.

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against the amendment offered by the gentleman from Nevada on the ground that the provisions sought to be included by the amendment seek to make appropriations not authorized by law. The Chair desires again to invite attention to clause 2 of rule XXI. . . .

The Chair further desires to invite attention to a precedent appearing in section 1340 of Cannon's Precedents of the House, volume 7, and read a part from that decision, as follows:

If the construction of a building, for instance, for a public purpose has been commenced, even though originally subject to the point of order, yet the work having commenced and there being no limit of cost, further appropriations may be made.

There has been presented to the Chair a letter from the Commissioner of Reclamation, and the Chair desires to invite attention to that letter in part as follows, the letter being under date of May 17, 1937. In passing the Chair would comment that, as shown by its date, the letter is subsequent to the date of the hearings to which the gentleman from New York invited atten-

tion. This letter is addressed to the gentleman from California [Mr. Buck] and is as follows:

In reply to your request regarding the status of work on the Central Valley project I am providing the following information concerning construction on this project as of May 1, 1937.

On that date more than 8,000 feet of tunnels had been excavated under contract and by Government forces, and more than 18,000 feet of tunnel and calyx drill holes sunk under contract and by Government forces on the Kennett (Sacramento River Basin) and Friant (San Joaquin River Basin) divisions of the project. The contracts under which this work was done were still in force on May 1 and additional work now is in progress.

On May 1, a large concrete, steel-frame warehouse was under construction and nearing completion on the Friant division which includes Friant Dam and the Friant-Kern and Madera Canals. . . .

The construction work now is fully under way, with virtually all the preliminary engineering completed. . . .

The Chair, therefore, feels that sufficient evidence has been presented to bring this appropriation in the pending amendment within the principle of work in progress as provided for in clause 2 of rule XXI.

The point of order is overruled.

Reappropriation For Works in Progress

§ 8.3 Reappropriation of moneys allotted by the Public Works Administration to several departments or agencies

to continue works in progress was held in order.

On May 13, 1941,⁽¹⁰⁾ during consideration in the Committee of the Whole of H.R. 4590, an Interior Department appropriation, a point of order against language in the bill was overruled as indicated below:

The Public Works Administration allotments made available to the Department of the Interior, Bureau of Reclamation, pursuant to the National Industrial Recovery Act of June 16, 1933, either by direct allotments or by transfer of allotments originally made to another department or agency, and the allocations made to the Department of the Interior, Bureau of Reclamation, from the appropriation contained in the Emergency Relief Appropriation Act of 1935, the Emergency Relief Appropriation Act of 1937, and the Public Works Administration Appropriation Act of 1938, shall remain available for the purposes for which allotted during the fiscal year 1942.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make a point of order against the language on page 8, from line 14 to line 25, inclusive, that it is legislation on an appropriation bill and not authorized by law.

MR. [JOHN] TABER [of New York]: This is not an item for the continuance of projects, nor is it limited to that, but it is an extension of acts which have or will have expired. Some of them were

given an extension a year ago in the appropriation bill that was carried then. A further extension is clearly not authorized by law. There is nothing in the exception to the rule like continuation of a project that would apply to this particular paragraph. It does not do that.

THE CHAIRMAN:⁽¹¹⁾ The Chair is prepared to rule. . . .

The Chair has examined the language of this paragraph . . . with sufficient care to determine that it appears to be exactly the same language as is included in a paragraph of the Interior Department appropriation bill which was considered on March 2, 1938. . . .

The Chair also invites attention to the fact that on page 705 of the hearings of the pending bill it is stated by the Commissioner of the Bureau of Reclamation that the items here covered constitute work in progress.

Therefore the Chair is constrained to overrule the point of order.

Parliamentarian's Note: While beginning in 1946 reappropriations of unexpended balances were prohibited in general appropriation bills, Rule XXI clause 5 (now clause 6) specifically permitted reappropriations of unexpended balances if in continuation of appropriations for public works on which work has commenced. (See Chapter 25, §3.16 *supra* for discussion of this issue.)

Reappropriation to Public Works Administration

§8.4 Language in an appropriation bill providing that

10. 87 CONG. REC. 4011, 77th Cong. 1st Sess.

11. Jere Cooper (Tenn.).

certain prior allocations or allotments made available to the Bureau of Reclamation, either directly or by transfer of allotments (reappropriations) from other agencies, should remain available during fiscal 1939 for those purposes for which allotted, was held in order under the exception for "works in progress."

On Mar. 2, 1938,⁽¹²⁾ the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. During consideration of the bill, a point of order was overruled, as follows:

The Public Works Administration allotments made available to the Department of the Interior, Bureau of Reclamation, pursuant to the National Industrial Recovery Act of June 16, 1933, either by direct allotments or by transfer of allotments originally made to another Department or agency, and the allocations made to the Department of the Interior, Bureau of Reclamation, from the appropriation contained in the Emergency Relief Appropriation Act of 1935 and the Emergency Relief Appropriation Act of 1937, shall remain available for the purposes for which allotted during the fiscal year 1939.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the paragraph upon the

ground that it is not authorized by law. . . .

MR. [JAMES G.] SCRUGHAM [of Nevada]: Mr. Chairman, the unexpended balances proposed to be appropriated by this paragraph are lawful projects which have qualified as being in order under the rules of the House for one or more of the following reasons:

First. That they are for improvements of existing projects.

Second. That the work on them is in progress.

Third. That there has been a finding of feasibility by the President, which automatically authorizes appropriations, as provided by the reclamation law, title 43, sections 412, 413, and 414.

THE CHAIRMAN:⁽¹³⁾ The gentleman from Nevada states that all of these projects are already under way and that this paragraph simply reappropriates money already available.

MR. TABER: These allotments have been made for all sorts of projects not authorized by law, and yet the adoption of this provision would authorize every project that has not yet been authorized for which an allotment has been made.

THE CHAIRMAN: The gentleman states that these projects are already under way.

MR. TABER: That would not authorize them.

THE CHAIRMAN: It authorizes reappropriation of appropriations heretofore made if the work is in progress. The Chair, therefore, overrules the point of order.

12. 83 CONG. REC. 2706, 2707, 75th Cong. 3d Sess.

13. Marvin Jones (Tex.).

***Evidence Required to Show
“Works in Progress”***

§ 8.5 In order to justify an appropriation for a construction project under the exception for “works in progress” by establishing that actual work has begun on the construction project, the Chair may require some documentary evidence that actual construction work has been begun.

On May 14, 1937,⁽¹⁴⁾ during consideration in the Committee of the Whole of H.R. 6958, an Interior Department appropriation, a point of order was sustained as indicated below:

Gila project, Arizona, \$1,250,000: *Provided*, That any right to use of water from the Colorado River acquired for this project and the use of the lands and structures for the diversion and storage of the same shall be subject to and controlled by the Colorado River Compact, as provided in section 8 of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1062), and section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1040);

MR. [LAURENCE] LEWIS [of Colorado]: Mr. Chairman, I make a point of order against the paragraph beginning on page 76, line 20, down to the bottom of the page and continuing on down

through and including line 3, on page 77, on the ground that this item of appropriation has not been authorized by law, and, further, that it is contrary to law. No authorization has been enacted for this item. . . .

THE CHAIRMAN:⁽¹⁵⁾ Permit the Chair to state to the gentleman from Nevada that the Chair is familiar with the citation to which the gentleman has called attention. The Chair is not familiar with the actual situation existing with reference to this project. What physical work has been started? What has been done? This the Chair would like to know in order that the Chair may determine whether the principle of work in progress applies to this item. The Chair will appreciate the gentleman's addressing himself to the Chair. . . .

[After further discussion:] The Chair is prepared to rule.

The gentleman from Colorado (Mr. Lewis) makes a point of order against the paragraph beginning in line 20 on page 76 and extending through the remainder of the paragraph, on the ground that it is legislation on an appropriation bill and on the further ground that it is not authorized by existing law; and he advances the position that it does not come within the principle of “work in progress.”

The Chair invites attention to section 2 of rule XXI. . . .

The Chair is impressed with what appears to be the unmistakable fact that there has been a general tendency to narrow the application of the so-called principle of “works in progress” as they relate to general appropriation bills. The Chair sought to secure the

14. 81 CONG. REC. 4607, 4608, 4610–12, 75th Cong. 1st Sess.

15. Jere Cooper (Tenn.).

best information available as to the actual situation existing with reference to this appropriation, and, with all due deference, the Chair feels that he has not been presented with a sufficient type of documentary evidence to clearly show the Chair that actual, physical construction on this particular project has been begun. To say the least, the Chair entertains some doubt in his mind as to the actual status of the work on this project. In the absence of evidence of that type, the Chair feels that this doubt should have some degree of control in making a decision on a matter of this importance.

The Chair also invites attention to the fact that the language that was called to the attention of the gentleman from Nevada [Mr. Scrugham] undoubtedly has some bearing upon the question as to whether or not this is legislation on an appropriation bill, especially the language carried in the proviso, which was recently discussed with the gentleman from Nevada. The gentleman from Nevada quite frankly replied to the inquiry of the Chair, that the purpose of including this language was to force compliance with a certain State compact.

Therefore, the Chair feels there could be no doubt that the effect of the inclusion of this language would be that of legislation on an appropriation bill.

Therefore, the Chair is constrained to hold that the proper showing has not been made in the form of documentary evidence that actual construction work has been begun on this particular project. The Chair feels, under an interpretation of the rule and application of the precedents, and especially in view of the language appearing in the

proviso, that the point of order made by the gentleman from Colorado [Mr. Lewis] to this paragraph should be sustained, and therefore sustains the point of order.

§ 8.6 The Chair, in determining whether an appropriation for a project was permissible under the exception for public works in progress, has accepted as documentary evidence a letter from an executive officer charged with the duty of constructing such project.

The proceedings of May 17, 1937, which took place during consideration of H.R. 6958, an Interior Department appropriation, have been discussed in a previous section.⁽¹⁶⁾

§ 8.7 News articles to the effect that soldiers were working on a highway or on the way to construct a highway were held not to be sufficient evidence that an appropriation was permissible under the exception for "works in progress."

On Mar. 10, 1942,⁽¹⁷⁾ the Committee of the Whole was considering H.R. 6736, a War Department civil functions appropriation

16. See § 8.2, *supra*.

17. 88 CONG. REC. 2223, 2224, 77th Cong. 2d Sess.

bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Francis H.] Case of South Dakota: On page 4, after line 10, insert "Alaskan Highway: For prosecuting the construction of a connecting highway from the States to and into Alaska, \$5,000,000." . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, I make the point of order against the amendment that it is not authorized by law. . . .

MR. CASE of South Dakota: In the first place, I doubt that it requires an authorization for the Corps of Engineers to carry on this work. . . .

Even if this project were one which required authorization by law the rules of the House provide that where a project is under construction and an appropriation is made for continuing construction, the appropriation is in order and is not subject to a point of order.

I call the Chair's attention to an Associated Press dispatch that appeared throughout the country in the papers on March 7, in which this statement was made:

An advance crew of American engineers is at Dawson Creek, and dozens of freight cars carrying construction equipment are expected to pass through Alberta in the next few weeks.

I also call attention to a statement on page 4 of the Official Information Digest issued by the Office of Government Reports on March 5, in which it is stated that War Secretary Stimson announced that Engineer Corps troops were already on their way to work on

roads for this Alaskan highway. In other words, construction has already begun.

The United Press this morning reported that 93 soldiers and engineers had arrived from a fort at Cheyenne, Wyo., and were already in Canada working on this highway. This highway is under construction, and on this basis an amendment providing continuation funds should be in order in this bill. . . .

THE CHAIRMAN:⁽¹⁸⁾ The Chair is ready to rule.

The mere fact that press reports show that certain groups are in Alaska does not constitute in the mind of the Chair that there is really a working performance going on in this project at all.

The Chair, therefore, sustains the point of order.

MR. CASE of South Dakota: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE of South Dakota: Did the Chair understand that I quoted also from the Information Digest issued by the Office of Government Reports?

THE CHAIRMAN: The mere information does not constitute an authorization, or does not show the work has actually begun, and is in course of construction.

"Addition" to Building

§ 8.8 An amendment to a general appropriation bill providing an appropriation for the building of an addition to

18. Alfred L. Bulwinkle (N.C.).

the Indian sanitorium at Shawnee, Okla., was held to be an appropriation for a public work in progress.

On Mar. 1, 1938,⁽¹⁹⁾ the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. During consideration, a point of order against an amendment to the bill was overruled as indicated below:

CONSTRUCTION AND REPAIR

For the construction, repair, or rehabilitation of school, agency, hospital, or other buildings and utilities, including the purchase of land and the acquisition of easements or rights-of-way when necessary, and including the purchase of furniture, furnishings, and equipment, as follows:

MR. [LYLE H.] BOREN [of Oklahoma]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Boren: Page 65, line 3, after the colon, add: "Shawnee, Okla., addition to Indian Sanitorium, \$150,000."

MR. [JOHN] TABER [of New York]: Mr. Chairman, I reserve a point of order against the amendment. Is there any legislation authorizing this expenditure?

MR. BOREN: I am not familiar with any specific authorization.

MR. TABER: Mr. Chairman, I make the point of order there is no legislation authorizing this expenditure and therefore it is legislation on an appropriation bill.

THE CHAIRMAN:⁽²⁰⁾ Does the gentleman from Oklahoma have anything to say on the point of order, or can the gentleman refer to any statute authorizing the expenditure?

MR. BOREN: Not specifically. The foundation of this amendment is based on the general law that permits extensions of these hospitals and buildings.

THE CHAIRMAN: May the Chair ask the gentleman from Oklahoma whether the institution for which he offers this addition is a going institution at the present time?

MR. BOREN: It is a going institution, and on page 55 of the bill, Mr. Chairman, provision is made for operating the institution.

THE CHAIRMAN: Is other provision made in this bill for the institution?

MR. BOREN: For the maintenance and operation; yes. This amendment is for additional facilities.

THE CHAIRMAN: Are there some buildings there at the present time?

MR. BOREN: Yes; there are six or seven buildings there now and the purpose of this amendment is to improve those buildings.

THE CHAIRMAN: Is this for the purpose of constructing a new building or for repairing a building already there?

MR. BOREN: It is an addition to the present building, providing sleeping porches, sewer facilities, and so forth.

THE CHAIRMAN: The point the Chair would like to have specific information about is whether there is a sanitorium there at the present time or is this a completely new building?

MR. BOREN: There is a sanitorium there at the present time, Mr. Chair-

19. 83 CONG. REC. 2650, 2651, 75th Cong. 3d Sess.

20. Marvin Jones (Tex.).

man, and the intent of the amendment is to provide, in addition to the present sanatorium, sleeping porches and sewer facilities, and so forth, for the existing building.

THE CHAIRMAN: The Chair would like to have the gentleman state specifically whether this is an addition to an existing building.⁽¹⁾ If that is the fact, it would make a difference in the ruling of the Chair on the point of order.

MR. BOREN: That is the fact, Mr. Chairman, and the word "building" should be pluralized, because there are about seven buildings there now.

THE CHAIRMAN: The Chair overrules the point of order.

Statutory Requirement that Repairs Be Authorized

§ 8.9 Where existing law (40 USC §606) specifically prohibits the making of an appropriation to construct or alter any public building involving more than \$500,000 unless approved by resolutions adopted by House and Senate Committees on Public Works, an appropriation in a general appropriation bill for public building construction or renovation not previously authorized by both committees is in violation of Rule

1. See 4 Hinds' Precedents §§3774, 3775, for further discussion of additions to existing buildings as works in progress.

XXI clause 2(a), notwithstanding the "work in progress" exception stated in that rule and readopted subsequent to enactment of 40 USC §606, since the law specifically precludes the appropriation from being made and the "work in progress" exception is only applicable where there is no authorization in law.

On June 8, 1983,⁽²⁾ paragraph of a general appropriation bill containing funds for the General Services Administration for construction of new buildings at two sites and repair of two existing projects was conceded to be unauthorized and was ruled out on a point of order, since the construction and repair had not been authorized by the Committee on Public Works and Transportation as required by statute for projects in excess of \$500,000 (40 USC §606), and since the public works in progress exception for unauthorized construction and repair does not countervail a statute requiring specific authorization before an appropriation can be made. The proceedings were as follows:

MR. [ROBERT A.] YOUNG of Missouri: Mr. Chairman, I rise to make a point

2. 129 CONG. REC. —, 98th Cong. 1st Sess.

of order against four provisions found in title IV in which the paragraph is entitled "General Services Administration, Federal Buildings Fund, Limitations on Availability of Revenue."

THE CHAIRMAN:⁽³⁾ The gentleman from Missouri (Mr. Young) is recognized on his point of order.

[The portion of the bill to which the point of order related was as follows:

The revenues and collections deposited into the fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)), shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings, rental of buildings in the District of Columbia . . . repair and alteration of federally owned buildings, including grounds, approaches and appurtenances, care and safeguarding of sites, maintenance, preservation, demolition, and equipment . . . preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, taxes, and any other obligations for public buildings acquired by purchase contract, in the aggregate amount of \$2,023,143,000 of which (1) not to exceed \$132,510,000 shall remain available until expended for construction of additional projects as authorized by law at locations and at maximum construction improvement costs (including funds for sites and expenses) as follows:

New Construction: . . .

Oregon: Portland, Bonneville Power Administration Federal Building, \$67,475,000.

Tennessee: Knoxville, Federal Building, \$14,990,000. . . .

Provided further, That funds in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount by project as follows, except each project may be increased by an amount not to exceed 10 per centum unless advance approval is obtained from the Committees on Appropriations of the House and Senate for a greater amount: . . .

New York: New York, Federal Office Building, 252 Seventh Avenue, \$579,000. . . .

Pennsylvania: Pittsburgh, Post Office, \$8,974,000. . . .]

MR. YOUNG of Missouri: Mr. Chairman, specifically, on page 18, lines 13 through 17 of the bill, H.R. 3191, under consideration, there appears an appropriation in the amount of \$67,475,000 for the construction of the Bonneville Power Administration Federal Building in Portland, Oreg., and \$14,990,000 for the construction of a Federal building in Knoxville, Tenn.

In addition, on page 20, lines 18 and 19, there appears an appropriation in the amount of \$579,000 for renovation of the Federal Office Building at 252 Seventh Avenue in New York, N.Y.; as well as on page 20, lines 23 and 24, there appears an appropriation in the amount of \$8,974,000 for the repair and alteration of the post office in Pittsburgh, Pa.

These four appropriations appear to be in violation of rule XXI, clause 2, of the rules of the House of Representatives. . . .

Mr. Chairman, section 7(a) of the Public Buildings Act of 1959, as amended, 40 U.S.C. 606, states:

In order to insure the equitable distribution of public buildings

3. Gerry E. Studds (Mass.).

throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in Section 4, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000 if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively.

Mr. Chairman, the law is clear that prior to the appropriation of funds for the construction or alteration of a public building which cost shall exceed \$500,000, a resolution must be reported by your House Committee on Public Works and Transportation approving such authorization. This action has not occurred to date. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . It is my understanding that the prospectuses for the construction that is in the bill have not been approved; is that correct?

MR. YOUNG of Missouri: Mr. Chairman, they have not been approved by our subcommittee nor by the full committee.

MR. ROYBAL: Since they have not been approved by any of the committees, I will concede the point of order, Mr. Chairman. . . .

THE CHAIRMAN: The point of order is conceded and sustained.

§ 9. Burden of Proof of Authorization

Burden on Proponent of Amendment

§ 9.1 The burden of proof is upon the proponent of an amendment to a general appropriation to show that the appropriation therein is authorized by law; and where the proponent was unable to cite a law authorizing the appropriation, the Chair refused to look beyond the absence of a statutory citation to determine whether a bill had been unconstitutionally "pocket vetoed".

The above principle is well established. Thus, on May 11, 1971,⁽⁴⁾ during consideration of H.R. 8190, a supplemental appropriation bill, the following proceedings took place:

MR. [FRED B.] ROONEY of Pennsylvania: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rooney of Pennsylvania: On page 8, after line 15 insert:

4. 117 CONG. REC. 14471, 92d Cong. 1st Sess. See also 96 CONG. REC. 7426, 7427, 81st Cong. 2d Sess., May 22, 1950; 81 CONG. REC. 4684, 4685, 75th Cong. 1st Sess., May 17, 1937.